HUE CHOOI YIN

v.

CHEW PIT KING

HIGH COURT MALAYA, KUALA LUMPUR
FAIZA TAMBY CHIK J
[DIVORCE PETITION NO: S4-33-691-2002]
7 JULY 2004

CIVIL PROCEDURE: *Injunction - Interlocutory injunction - Petition to declare customary marriage valid - Application for injunction to prevent tendering of documents relevant to facts in issue in petition - Whether an abuse of court's process - Whether lacking cause of action*

The petitioner had filed a petition seeking to declare her customary marriage to the late Chew Choon Ming ('CCM') as valid and subsisting for all intents and purposes. CCM was the founder of a society known as Baitianggang Universal Spiritual Movement ('BUSM'). CCM's son, the respondent, in his reply, disputed the petitioner's allegation of the existence of a customary marriage, and in support thereof, filed the relevant bundles of documents including the petitioner's diaries and other documents belonging to CCM. It was not in dispute that the documents in question had since been entrusted by the petitioner to two individuals ('Ms. Yum and Ms. Chan'), to be used as historical artifacts and records for BUSM. The petitioner alleged breach of confidence on the part of Ms. Yum and Ms. Chan, and so applied for an injunction to prevent the filing of the documents in court and for the diaries to be returned to her. The petitioner, however, had not filed a separate action for breach of confidence, and that being so, before the learned judge, questions *inter alia* arose as to whether the application for injunctive relief herein constituted an abuse of the court's process and ought to be refused.

Held (dismissing the application):

[1] Since the main issue to be tried in the petition involved the question of whether or not there was a Chinese customary marriage between the petitioner and CCM, and whether or not the petitioner was the lawful widow of the late CCM, the respondent was entitled to bring in evidence during the trial of the petition to disprove these issues of the petition. It was also desirable in the interest of justice that the same be allowed to be tendered in court for the final determination of the petition.
(p 266 e-g)

[2] The issue in the petition is on the alleged marital status of the petitioner and not a breach of confidence. It followed that this court should not entertain this interlocutory application for injunction, which was not anchored to any cause of action for breach of confidence. The fact that the petitioner filed the application for injunction without commencing a fresh action for breach of confidence was an abuse of the court's process. The application further constituted an abuse of process since it was filed with the collateral purpose of preventing the respondent from disclosing and using the documents in the legal proceedings in this court, knowing that their contents were highly relevant to the fact in issue of the petition and meant to rebut the petitioner's evidence at trial.
(pp 269 e-f, 270 g & 271 d-e)

[3] The petitioner's diaries were given to Ms. Yum in circumstances which did not import an obligation of confidence but with the intention and knowledge of the petitioner that her personal documents would be used as historical artifacts of the early activities of CCM as the founder of BUSM. In any case, the respondent's actions in assisting the court to determine the truth herein could not be said to be acts of misusing the petitioner's documents. (p 271 f-g)

Case(s) referred to:

American Cynamid [1975] 1 All ER 504 ***(refd)***
Arab Malaysian Corp Builders Sdn Bhd & Anor v. ASM Development Sdn Bhd [1998] 2 CLJ Supp 169 HC ***(refd)***
Goddard v. Nationwide Building Society [1986] 3 All ER 264 ***(refd)***
ITC Film Distributors v. Video Exchange Ltd & Ors [1982] All ER 241 ***(refd)***
Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd [1999] 4 CLJ 533 CA ***(refd)***
Kanawagi Seperumaniam v. Penang Port Commission [2002] 8 CLJ 503 HC ***(refd)***
Kuruma v. The Queen [1955] 2 WLR 223 ***(refd)***
Puncak Niaga (M) Sdn Bhd v. CGE Utilities (M) Sdn Bhd [2002] 1 CLJ 35 HC ***(refd)***
PP v. Hj Kassim [1971] 2 MLJ 115 ***(refd)***
Seager v. Copydex Ltd C/A [1967] 1 WLR 923 ***(refd)***

Legislation referred to:

Evidence Act 1950, ss. 5, 136(1)

For the petition - CKV Devan (K Sarasvathy); M/s Devan Hussin
For the respondent - WH Kan (YK Soh) M/s Azam, Malek & Soh

Reported by WA Sharif

JUDGMENT

Faiza Tamby Chik J:

In prayer 1 and 2 of this application for injunction (encl. 24), the petitioner is seeking from this court for an injunction to prevent the respondent and his agents from disclosing and using the documents of the petitioner and the late Chew Choon Ming ('the late CCM') which have been entrusted to Ms. Yum Shirley and Ms. Chan Yen Peng. The basis of the petition for her application as stated in para. (ii) of encl. 24 is that Ms. Yum Shirley and Ms. Chan Yen Peng have without authority disclosed the documents of the petitioner including her diaries and the late CCM which amounted to a breach of confidence. It can also be gathered from the affidavit in support of the petitioner affirmed on 9 April 2003 ("encl. 25") in support of encl. 24 that:

(a) The petitioner had left her diaries for the year 1979, 1980 and 1983 and her personal document in the private room of the late CCM whereby she has access to the said room before the late CCM passed away on 5 June 2000 (para. 6);

(b) Since the month of October 2002, the petitioner was aware that Ms. Yum Shirley and Ms. Chan Yen Peng was having possession of her diaries (para. 10);

(c) Due to the breach of confidence by the respondent, Ms. Chan Yen Peng and Ms. Yum Shirley, this court ought to grant an injunction to prevent the respondent and his agents from disclosing and using the petitioner's documents.

I think the petitioner's application for injunction under encl. 24 is misconceived and without any basis on the following grounds:

(a) the petitioner has failed to show that there is a serious question to be tried or there is a *status quo* to be preserved in the application for injunction under encl. 24;

(b) the petitioner's application for injunction is an abuse of the court's process as the application for injunction was filed with the collateral purpose of preventing this court from considering relevant and important evidence including the documents which clearly disprove the petitioner's case in this petition;

(c) the petitioner's diaries are not personal and confidential information as at the material time, the petitioner has surrendered her diaries to Ms. Yum Shirley with the knowledge and consent for the same to be used as historical artifacts and records for Baitianggong Universal Spiritual Movement ('BUSM'). In fact since they are for record and historical artifacts, then they would be available to the members of public for inspection;

(d) the petitioner has no right to seek an injunction restraining the respondent from disclosing and using the personal document of the late CCM who at the material time was the respondent's father.

In the main suit ie, the petition, the petitioner is petitioning to this court for a declaration that the marriage celebrated on 5 May 1979 between the late CCM and the petitioner in accordance with Chinese customary rites in Ipoh, Perak be declared to be valid and subsisting marriage for all intents and purposes (see prayer 1 at p. 10 of the Amended Petition dated 20 Jun 2002). In reply to this petition, the respondent has filed his reply to the petition disputing the petitioner's allegation of the existence of the Chinese customary ceremony on 5 May 1979 and also disputing the respondent's status as the petitioner's status as the legal widow of the late CCM (see respondent's reply dated 30 October 2002). In support of the respondent's case and as rebuttal to the petitioner's claim, the respondent through his solicitors have filed in this court relevant bundles of documents which among others consists of the petitioner's diaries and documents and also other documents belonging to the late CCM. I think since the main issue to be tried in the main suit as claimed by the petitioner involves the question of whether or not there was a Chinese customary marriage between the petitioner and the late CCM on 5 May 1979 and whether or not the petitioner was the lawful widow of the late CCM, the respondent is entitled to bring in evidence during the trial of the petition to disprove the issue of the main petition action namely to disprove the petitioner's allegation that there was a Chinese customary marriage between the petitioner and the late CCM on 5 May 1979. It is observed that the respondent proposes to use the documentary evidence including the diaries and documents of the petitioner and the late CCM in order that this court has the opportunity to consider all evidence relevant to the fact in issue before making a fair and just decision. based on the respondent's affidavit in reply affirmed on 22 April 2003 ('encl. 41) and the affidavit in reply of Chan Yen Peng and Yum Shirley affirmed on 22 April 2003 ('encl. 41A'), the respondent, Ms. Chan Yen Peng and Ms. Yum Shirley have clearly explained as to how a copy of the diaries and other document of the petitioner and the late CCM were given to them, ie,:

(a) At all material time, Ms. Chan Yen Peng was the personal assistant to the late CCM and has helped the late CCM in all aspects of the group of companies. She was also the personal secretary of the late CCM who has entrusted by the late CCM to look after the affairs of the late CCM including the management and taking of all the personal documents of the late CCM which is kept in the late CCM's personal room. This was known and accepted by the petitioner;

(b) Sometime in the year of 1997 or 1998, the late CCM has directed Ms. Yum Shirley to contact the petitioner to obtain records of the activities of the late CCM in his early years of the teaching and practice of the BUSM because prior to Ms. Chan Yen Peng appointment as his secretary, the petitioner was the late CCM's secretary in his early years between 1979 to early 1980 and had recorded the daily activities of the late CCM;

(c) The late CCM wanted Ms. Yum Shirley to collect and compile all records and information available on the early years of BUSM to be used as the history of BUSM so that all the present and future members of BUSM can refer and have access to the history of BUSM. Further to the late CCM request, the petitioner has voluntarily given all the records including the diaries of the late CCM and her own diaries to Ms. Yum Shirley for the purpose of compiling the records of BUSM;

(d) Subsequently, the petitioner's documents including her diaries were given and kept by Ms. Yum Shirley in her possession in the cabinets located outside the personal room of the late CCM. The fact that the late CCM has entrusted Ms. Yum Shirley to keep and preserve all the personal document given by the petitioner to Ms. Yum Shirley as historical artifacts of BUSM which is clearly within knowledge and with the consent of the petitioner;

(e) A copy of these documents including the late CCM's documents and also the petitioner's documents were thereafter given to the respondent to be used as documentary evidence in court.

It is trite law that in application for interlocutory injunction as stated in the case of *American Cynamid* [1975] 1 All ER 504, the first question which the court has to be satisfied is whether there is a serious question to be tried. Based on this petition, the fact in issue for the court's determination is whether or not there is a Chinese customary marriage between the late CCM and the petitioner on 5 May 1979 and whether the petitioner should be declared as the lawful wife of the late CCM for all intent and purpose. It is clear that the main issue to be tried in this petition action is not linked or related in any

way at all to the issue of whether or not there is a breach of confidence and whether or not the petitioner is entitled to a permanent injunction to prevent the disclosure or usage of the petitioner's documents. In another words, the petitioner's present application is only relevant if the petitioner had commenced an action for breach of confidence. After all it is trite law that the purpose of interlocutory injunction is to preserve the *status quo*, then it begets the question what status quo which the petitioner seek to preserve. After all, the main action in the petition is a declaratory action of her marital status and not about breach of confidentiality. I therefore rule that the petitioner has failed to show that she has a cause of action for breach of confidence and the petitioner has failed to show that there is a serious question to be tried as the petition action is clearly not based on the cause of action of breach of confidence. There is no *status quo* be preserved in this petition action by seeking an injunction to restrain the respondent from disclosing and using the diaries since at all material times, the triable issue in this petition is clearly not on whether there is a breach of confidence by the respondent but whether or not there was a marriage between the petitioner and the late CCM. In the case of *Kanawagi Seperumaniam v. Penang Port Commission* [2002] 8 CLJ. 503, I made the following observation:

> And further it is well established in law that an interlocutory injunction is ancillary to a cause of action and therefore it is only a party who has a cause of action who can apply for an interlocutory injunction.
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> This law has been followed in Malaysia. *See Lim Chong Constructions Co. Sdn. Bhd. v. Silam Quarry Sdn. Bhd.* [1990] 2 CLJ (Rep) 374 where Zakaria Yatim J (as he then was) said:
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> > One of the essential requirements for granting an interlocutory injunction, as laid down in *American Cynamid Co. v. Ethicon Ltd.* at p. 510, is that the court must be satisfied that there is a serious question to be tried. Lord Diplock kin his speech in the American Cynamid case envisaged a trial of action. In *Cayne v. Global Natural Resources*, May LJ said at p. 327:
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> > > In the *Cyanamid* case [1975] 1 All EF 504 there was a serious question to be tried between the parties, which could only be resolved by a trial. It was clearly contemplated that there would be a trial. The application for interlocutory injunction was merely a holding operation pending that trial ...
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> > Since a trial is envisaged the plaintiff must show that he has a cause of action. The grant or refusal of an interlocutory injunction therefore depends on whether there is a cause of action. In *Siskina v. Distos Compania Naviera SA* Lord Diplock, in his speech at p. 256 said:

> A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amendable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancilliary and incidental to the pre-existing cause of action. It is granted to preserve the *status quo* pending the ascertainment by the curt of the rights of the parties and the grant to the plaintiff of the belief to which hiss case of action entitles, which may or may not include a final injunction.

In the present case, since there is no cause of action there is no serious question to be tried.

In the case of *Arab Malaysian Corp Builders Sdn Bhd & Anor v. ASM Development Sdn Bhd* [1998] 2 CLJ Supp 169 RK Nathan JC (as he then was) held:

> The present application, no doubt seeks an interlocutory injunction requires the existence of a cause of action. The mere fact that a party can apply for an injunction is in itself not a cause of action. In *Lim Chong Construction Sdn. Bhd. v. Silam Quarry Sdn. Bhd.* [1990] 2 MLJ 423 Zakarian Yatim J (as he then was) laid at p. 424 ... .

I therefore come to the conclusion that the issue in the petition is on the alleged marital status of the petitioner and not a breach of confidence, it therefore follows that this court would not entertain this interlocutory application for injunction which is not anchored to any cause of action for breach of confidence where no such action has been filed in court.

I think the petitioner's application for injunction is an abuse of the court process as this interlocutory application was filed with a collateral purpose to prevent the due administration of justice. The petitioner, knowing that her diaries and documents have the effect of not only destroying the petitioner's case and the petition as filed is without any basis, the petitioner is seeking through encl. 24 for injunction to prevent the respondent from using and disclosing the documents to the court for the court's consideration. Further since the document were given for the purpose of being kept as record of BUSM, then it would necessary follow that it would be available to other members of the movement to view and make copies of it. Effectively, this means that the diaries and the document would be available to the members of the public. Therefore, the petitioner's intention for apply for injunctive reliefs is clearly with the collateral purpose of preventing the respondent from submitting evidence which would enable this court to determine the truth of the matter.

The contents of the documents including the diaries are evidence which are directly relevant to the fact in issue of this petition's action to disprove the petitioner's allegation of the marriage ceremony on 5 May 1979. Section 5 of the Evidence Act 1950 clearly provided that:

> Evidence may be given in any suit or proceeding of the existence or non-existence of the very fact in issue and of such other facts as are hereinafter declared to be relevant, and or no others.

In the case of *Public Prosecutor v. Haji Kassim* [1971] 2 MLJ 115, the Federal Court approved the general principle stated in the Privy Council case of *Kuruma v. The Queen* [1955] 2 WLR 223:

> The test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained ... . There can be no difference in principle for this purpose between a civil and criminal case.

The test to decide whether or not the document can be used as evidence in this court is to apply the relevancy criteria and it is to be noted that once the evidence is relevant to the main issue in the action, the court is not concerned with how the evidence was obtained. The issue of relevancy of any piece of evidence is for the court to decide during the stage of full trial as provided under s. 136(1) of the Evidence Act 1950:

> When either party proposes to give evidence of any fact, the court may ask the party proposing to give evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if it thinks that the fact, if proved would be relevant and not otherwise.

and therefore, the petitioner by seeking an injunction before the full hearing of the case amounted to an abuse of the court process as the application for injunction was done with the purpose of preventing the Respondent from disclosing and using evidence which are clearly relevant to the fact in issue of this petition.

In the case of *Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd* [1999] 4 CLJ 533, the Court of Appeal have made the following observation:

> It is trite law that a person who has a legitimate grievance may invoke the court's process to obtain redress. But cases may arise where the true purpose for invoking the court's process is something other than to obtain remedy provided by law. It may be to oppress a defendant. Or it may be to apply pressure upon him which the law regards as illegitimate. Or it may be to merely commence an action and let it hand over the head of the defendant with no intention of bringing it to a conclusion ... .

> Since the circumstances in which the court's process may be abused are varied and numerous, the categories of such cases are therefore not closed. Whether the institution of an action or its continuance or a step taken therein amounts to an abuse of process depends upon particular and individual circumstances. When an action is found to be an abuse of the court's process, it may be struck out or stayed. If it is too late to do this, the party aggrieved may bring an action based upon the tort of abuse of process.
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> Abuse of process in the context of a step taken in proceedings, would in my judgment, include the use of interlocutory relief as an instrument of oppression. The law provides for remedies, both interim and final, to a litigant to set right, or to prevent, some harm or injury that has been done or may be reasonably apprehended. It is plainly an abuse of the court's process where relief at law or in equity is used, not to remedy a genuine grievance, but as an instrument of oppression. There have been instances before our courts where an interlocutory injunction has been found to have been used as an instrument of oppression. We have always intervened in such cases and set the matter right.

I therefore think that the fact the petitioner filed his application for injunction without commencing a fresh action for breach of confidence is an abuse of court process and further the fact that petitioner's filed this application for injunction with the collateral purpose of interfering with the administration of justice is also an abuse of the court's process. In our case the documents including the diaries are directly relevant to the determination of the fact in issue in the petitioner's case and it is therefore desirable in the interest of the justice that these evidence should be allowed to be tendered in this court for the final determination of this petition action. In addition, these document and diaries of the petitioner were not obtained by unfair or illegal means as it was given to a Ms. Yum Shirley by the petitioner with the intention and knowledge that these document would be used as historical artifacts of BUSM. As the petitioner's action here involves a fact in issue which can only decided by reference to the relevant evidence of the early activities of the late CCM which were considered by the members of BUSM as the historical records of BUSM, The respondent has acted bona fide to assist this court by disclosing to this court evidence and document which has been given by the petitioner previously for the purpose of being used as the history of BUSM and the late CCM.

In the case of *Goddard v. Nationwide Building Society* [1986] 3 All ER 264, Nourse LJ in the Court of Appeal in England had made the following observation:

> Secondly, although the equitable jurisdiction of much wider application, I have little doubt that it can prevail the rule of evidence only in cases where privilege can be claimed. The equitable jurisdiction is well able to extend, for example to

> the grant of an injunction to restrain the unauthorized disclosure of confidential communications between priest and penitent or doctor and patient. But those communication are not privileged in legal proceedings and I do not believe that equity would restrain a litigant who already had a record of such communication in his possession from using it for the purposes of his litigation. It cannot be the function of equity to accord de facto privilege to communications in respect of which no privilege can be claimed. Equity follows the law.

I think the relevancy of the diaries and document to the issue of whether or not the petitioner has married the late CCM on 5 May 1979 and as to whether the petitioner is the lawful widow of the late CCM, clearly justify the disclosure and usage of the diaries and document which has come to the possession of the respondent for the purpose of determining the truth in his court. Furthermore it is to be emphasize that the respondent has not obtained the personal document of the petitioner by trick or illegal means and the respondent merely obtained a copy the diaries from 3rd parties who are in possession of these personal document and based on the *Goddard's* case, the petitioner cannot applied for an equitable remedy of injunction to restrain the respondent who already has possession of the petitioner's personal document from using it for the purpose of this petition action.

Even if the petitioner's diaries may be confidential in nature belonging to the petitioner once a upon time, the fact that the petitioner has given these documents to Ms. Yum Shirley sometime in 1997 or 1998 with the full knowledge that these documents will be used as historical artifacts and records for BUSM for the reference of all members of BUSM, had caused these documents to lose it's confidentiality identity. When the petitioner surrendered her diaries to the 3rd party, the petitioner knew that her diaries will be used as the historical records of the late CCM and the history of the late CCM will be viewed by all members of BUSM. Since the petitioner's documents were given not in a circumstances importing any obligation of confidence and in fact it was given with the purpose of allowing members of public to view it, therefore there is no duty of care owed by the 3rd party to maintain the confidentiality of the petitioner's diaries. In fact if the diaries are intended to be used as historical artifacts, then it can no longer be argued that it contained confidential information since the petitioner herself is estopped from denying that she has agreed to allow her diaries to be used as historical artifacts of BUSM which will be viewed by the members of the BUSM. The respondent is therefore entitled to obtain a copy from 3rd party who is in possession of the diaries for the purpose of showing the historical activities of the late CCM to enable the Court to make a finding on whether or not there was in fact a marriage ceremony between the petitioner and the late CCM in his early years.

In the case of S*chmidt Scientific Sdn Bhd v. Ong Han Suan* [1998] 1 CLJ 693, RK Nathan JC (as he then was) has outlined the following principles and made the following observations:

> In order to succeed in an action for breach of confidence, the plaintiff must show that the information sought to be protected: (i) is of a confidential nature; (ii) was communicated in circumstances importing an obligation of confidence; and (iii) was used in an unauthorised way to the detriment of the plaintiff. In the instant case, the plaintiff had satisfied all three elements and was entitled to an injunction against all the defendants.

It is therefore clear that to succeed in an action for breach of confidence, the petitioner must establish to the satisfaction of the court that the diaries were given to the 3rd party in circumstances importing an obligation of confidence and there must be an unauthorised use of that information to the detriment of the petitioner. However, in our case it is clear that there is no action filed in court by the petitioner for breach of confidence and this application for interlocutory injunction is not anchored to any cause of action for breach of confidence. It is therefore not possible for the court to make any finding as to whether there is a breach of confidence in this petitioner action and by granting the injunction to prevent the respondent from disclosing and using the diaries does not serve any purpose nor does it preserve any status quo pending the full trial of a cause of action which is not based on breach of confidence.

In relation to the document of the late CCM, the petitioner has not proven that she is the lawful widow of the late CCM or that she is a beneficiary to the estate of the late CCM. As such the petitioner has no right to injunct the Respondent from disclosing and using the documents of the late CCM in this case particularly when such document is relevant to disprove that the late CCM has never married the petitioner at all material times.

The case of *ITC Film Distributors v. Video Exchange Ltd. and Others* [1982] All ER 241 relied by the petitioner's solicitors to support this application for injunction can be distinguished and not relevant to our case on the following grounds:

(a) the ITC case is a copyright action whereas our case here before the court is not an action for breach of confidence;

(b) in the ITC's case, the confidential document were stolen by the defendant's solicitors from a box brought into the court by the plaintiff's solicitors whereas in our case here, the respondent did not steal any document of the petitioner but was given a copy of the document of the petitioner who were in the possession of a third party;

(c) in our case, it is clear that since the respondent's document were not obtained by improper means by the respondent and in addition, are highly relevant to the fact in issue of the main petition action, this court should not deny the respondent of his legitimate interest in seeking to use the information for the purpose of ascertainment of the truth in this court.

In the case of *Seager v. Copydex Ltd. C/A* [1967] 1 WLR 923 relied by the petitioner's solicitors, an action for breach of confidence was filed and in that action the plaintiff seek for injunction to prevent the breach of confidence and damages. In our case, there is no such action but merely an interlocutory application for injunction which is not anchored to any main action for breach of confidence.

It is noted that the petitioner is seeking for an order against the respondent and his agent for the return of all her diaries and other documents. Such a prayer is clearly an abuse of the court process as the petitioner's prayer in the application for injunction under encl. (24) clearly does not have such a prayer. In the case of *Puncak Niaga (M) Sdn. Bhd. v. CGE Utilities (M) Sdn. Bhd.* [2002] 1 CLJ 35, the court held that:

> The hearing of this application for injunction should be confined solely to the prayers as per the summons in chambers only. The plaintiff's prayers therein were clearly worded, ie, seeking an injunction to prevent the defendant from appointing any third party to be awarded the job of security services for the security area. The court did not agree with the defendant's submission that the plaintiff was in fact seeking an order that it be appointed the security services. That was because the plaintiff did not pray for it in this application.

Therefore, I am of the view that the petitioner should not be allowed to ask for any additional prayer which has not been applied for the summons in chambers.

In conclusion, I come to the conclusion that the petitioner's application under encl. (24) for injunction must fail on the following grounds:

(a) The petitioner has failed to disclose that she has a cause of action for breach of confidence for this interlocutory application to be anchored to;

(b) The petitioner application for injunction is an abuse of the court's process as this application for injunction was filed with the collateral purpose of preventing the respondent from disclosing and using the diaries and documents of the petitioner in the legal proceedings in this court knowing that the content of the diaries and documents are highly relevant to the fact in issue of this petition action and would rebut the petitioner's evidence at trial';

(c) The Petitioner's diaries were given to Ms. Yum Shirley in circumstances which does not import an obligation of confidence but with the intention and knowledge of the petitioner that her personal documents would be used as historical artifacts of the early activities of the late CCM who is the founder of BUSM;

(d) The respondent's intention of producing and using the diaries is for the purpose of disproving the fact in issue in this petition action and surely, the respondent's intentions and actions here in assisting the court to determine the truth cannot be said to be an act of misusing the petitioner's relevant document;

(e) The court has the right to decide whether or not the diaries and documents are relevant to the main issue in the petition's action and surely, the petitioner cannot seek an injunctive relief to prevent the process of administration of justice in court.

For these reasons the petitioner's application for injunction under encl. (24) is hereby dismissed with costs to be paid forthwith.